

MINUTES

OF THE

NATURAL RESOURCE COMMISSION

TELEPHONE MEETING

JULY 26, 2006

WALLACE STATE OFFICE BUILDING
DES MOINES, IOWA

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MEETING MINUTES

CALL TO ORDER

The telephone meeting of the Natural Resource Commission was called to order by Commissioner Duncan at 8:30 a.m. on Wednesday, July 26, 2006. Those in attendance were announced. Roll call indicated the following commissioners present.

MEMBERS PRESENT

Randy Duncan
Kim Francisco
Liz Garst
Carol Kramer
Janice Marcantonio

MEMBERS ABSENT

Joan Schneider
Lennis Moore

Motion was made by Commissioner Kramer to appoint Commissioner Garst as Acting Chair for this meeting. Seconded by Commissioner Francisco. Motion carried unanimously.

Liz Garst presided as Acting Chair for the remainder of the meeting.

HONEY CREEK – CONSTRUCTION MANAGEMENT AGREEMENT

Linda Hanson, Administrator, Conservation and Recreation Division, presented the following item.

The Natural Resources Commission's approval is requested for the entering in to a Construction Management Agreement with Regency Hotel Management, LLC (Regency) to design and manage construction of Honey Creek Resort State Park (Park). The Agreement would authorize the Department (DNR) to execute an agreement with Regency, who would subcontract with TSP, Inc., to provide the bulk of the design and construction management for the Park. The total value of services for this contract is \$4,064,483, which will be used to pay for design services, construction management, and some surveying and geotechnical work. These costs represent less than ten percent of the total project costs of approximately \$50,000,000 to design and build the entire Park.

During the regularly scheduled March 13, 2006 Commission meeting, the DNR sought and received approval to enter into negotiations with Regency to design and construct the Park. Since then, the DNR has been working with Regency, its subcontractor TSP, Inc. (TSP), Regency's counsel, the DNR's outside counsel from the Dorsey and Whitney LLP law firm, and the Attorney General's Office to draft an agreement that is satisfactory to all parties. The result

is a Construction Management agreement that makes Regency and TSP responsible for the design and construction management. It also provides the Department with the final authority on all design decisions. The DNR is responsible to enter into contracts with the actual builders and service providers on the construction site, but TSP will prepare bidding documents, assist in the bidding process, and provide oversight of those additional entities throughout construction.

Funding for this contract, and the related construction contracts, will be provided by the following sources: existing legislative appropriations; private fundraising efforts; in-kind donations of services, including telecommunications, water and electric line installation; Marine Fuel Tax; Iowa Values Fund; proceeds of public bonds, in accord with the Honey Creek Premiere Destination Park Bonding Authority, which will happen this fall; and the Parks and Institutional Roads Fund.

The anticipated time for completion of this Construction Management Agreement is May of 2008, at which time Regency plans to open Honey Creek Resort State Park for business.

Note: A copy of the contract will be on file in the Department's Records Center.

Linda Hanson introduced Kelley Myers, in-house legal advisor and Michael Smith, Attorney General's Office, who, along with other staff and legal counsel have been involved in the negotiations and development of this contract. Ms. Myers reviewed the construction agreement in detail with assistance from the outside counsel at Dorsey and Whitney LLP. She said that the initial plan was to have the Hotel Management Agreement and Construction Management Agreement executed at the same time, but because of the scheduled May 2008 opening date, the decision has been made not to delay the execution of the Construction Management Agreement while finishing negotiations for the Hotel Management Agreement. The Department decided to ask for approval of the Construction Management Agreement in order to commence with the design and letting contracts in the fall. The hotel management agreement will be presented to the Commission for approval at a later date.

Ms. Myers explained that the project will occur in phases. The elements of both Phase I and Phase II were described and individual questions answered. It was noted that the scope of work can be changed through amendments and writing by the Department if modifications become necessary because of contingencies, funding gaps, and/or unexpected changes in construction or management costs.

Ms. Myers explained that Regency is the Construction Manager. Regency will subcontract with TSP to provide the bulk of the design and construction management for the Park and TSP will be providing the on-site assistance. The Department will acknowledge the contract between Regency and TSP. It was noted that the prices in the contract are fixed, meaning that the Department will pay Regency no additional money unless approved by amendment in writing. The Department will be advertising, letting and awarding all of the contracts with the construction contractors. TSP will be helping the Department develop those documents and will work with the Department through the selection process. TSP will supervise the progress of the on-site contractors and provide the on-site management of those contracts, if TSP and the Department determine such on-site management is necessary. In addition, TSP will provide the

department with a monthly update to the schedule. Mike Broderick, a professional engineer for the department and Basil Nimry will both be points of contact for TSP to manage the construction aspects of this project.

Regency will be assisting the Department throughout the bond process, which includes meeting with the bond authority, the underwriter and their financial consultant and bond counsel to address all aspects of that process.

Ms. Myers reviewed the provisions for termination of the Construction Management Agreement, which are: 1) termination due to non appropriations, non issuance of bonds, monies de-appropriated or if Departmental duties materially change, whereby a 60-day notice will be provided to the contractors to terminate all work. In such cases, payment will be made for all work completed through termination; 2) termination for convenience, which means the Department may terminate the agreement at any time immediately upon notice. If this option is used after the bonds are issued, Regency will be paid for lost income and profit.

Following a question, Michael Smith responded that the construction contractors will be required to provide a performance bond. He said those contracts will be bid in the same manner as other public improvement contracts.

Because the Department typically uses the CSI (Construction Specification Institute) and TSP and Regency use the AIA (American Institute of Architects) document, Ms Myers noted some figure changes to Exhibit E, Phase I Reimbursable Expenses. Those changes were: Design Services: \$116,000 and Construction Management: \$253,000. Under Phase II, Design Services amount is changed to \$28,000.

Commissioner Garst questioned the Department on its ability to take legal action against Regency in the event a legal claim arises pursuant to this contract. Ms. Myers explained that the Department must take action against TSP in the event that a claim arises solely out of TSP actions but that Regency is still liable for its acts or omissions under this contract. The Attorney General's office and attorneys for Dorsey and Whitney, LLP have reviewed and are satisfied with TSP's insurance coverage for this agreement.

Commissioner Duncan expressed concern, in light of recent contract issues in other governmental entities, that reviewing or understanding all provisions of the contract is difficult. Linda Hanson reminded the Commissioners that staff is and has been available to answer any questions, and exercised due diligence to make sure the provisions of the contract are understood. She noted that the discussions at the meetings are taped to show that the contract has gone through very thorough review and that questions were asked and answered.

Motion was made by Commissioner Duncan to approve the Honey Creek Construction Management Agreement as revised, with the approval based entirely on the recommendation of DNR staff and its attorney's assurances and recommendations that the contract is appropriate for the DNR. Seconded by Commissioner Francisco. Motion carried unanimously.

AGREEMENT APPROVED

NEXT MEETING

The next meeting will be August 10 at Kent Park in Johnson County. An update on the design of the Honey Creek Destination Park will be presented.

ADJOURN

The July 26 Telephone Meeting adjourned at 9:05 a.m.

Jeffrey R. Vonk, Director

Joan Schneider, Chairperson

Liz Garst, Secretary

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